

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

~~ENTERED ON DOCKET~~
AUG 22 2007

IN RE:)	CHAPTER 13
)	
LYNDA CHERYL DOBBINS,)	CASE NO. 02-66806 -MHM
)	
Debtor.)	

**ORDER ON PETITION OF WASHINGTON MUTUAL BANK
FOR UNCLAIMED FUNDS**

On July 30, 2007, Washington Mutual Bank ("WaMu") filed a Petition for Payment of Unclaimed Funds.¹ WaMu states in the petition that it seeks payment on behalf of Providian National Bank ("Providian"), a creditor of Debtor. Providian held an allowed unsecured claim (\$24,784.72), which resulted in a payments from the Chapter 13 Trustee pursuant to Debtor's Chapter 13 plan of a total of \$13,631.60. Providian failed to negotiate a check issued by the Chapter 13 Trustee ("Trustee") in the amount of \$5,134.15 (the "Dividend"). Trustee paid the Dividend into the Court's registry pursuant to 11 U.S.C. § 347(a).

Section 347(a) provides for disbursement of unclaimed funds pursuant to chapter 129 of title 28 of the United States Code. The applicable provisions of chapter 129 direct the Court to disburse unclaimed funds to the "rightful owners," 28 U.S.C. § 2041, upon "full proof of the right thereto." 28 U.S.C. § 2042. Under chapter 129's requirements and due process principles, the duty to ascertain that unclaimed funds are disbursed to the true owner

¹ Kim Sherrie Sawyer, General Counsel for The Locator Services Group, Ltd. ("Agent"), as attorney-in-fact for WaMu, signed a petition that seeks disbursement to The Locator Services Group Ltd. of unclaimed funds.

lies with the Court. *Cf. Leider v. United States*, 301 F.3d 1290, 1296 (Fed. Cir. 2002). Because an application for unclaimed funds payable on a proof of claim in a bankruptcy case must be considered *ex parte*, the applicant's proof of the authority of an individual or entity to act on behalf of the Claimant and the Claimant's proof that it is actually entitled to the funds must be clear and unambiguous. *See generally, In re Applications for Unclaimed Funds*, 341 B.R. 65 (Bankr. N.D.Ga. 2005). The showing, to be clear enough to satisfy the legal requirements for unclaimed funds' retrieval, is analogous to the chain of title on real property. If the chain is broken, the legal right to the funds is not clearly shown.

WaMu, through an attorney-in-fact via given by a power of attorney granted to its Agent, seeks funds that were paid on account of a proof of claim filed by Providian. Agent included copies of the 10-K reports filed with the Securities and Exchange Commission (the "SEC") by "Washington Mutual, Inc." (which is not the same legal entity as Washington Mutual Bank) and "Providian Financial Corporation" (which is not the same legal entity as Providian National Bank). The only remote reference in either entity's 10-K report is the fourth (4th) sentence of Part I of the 10-K filed by "Washington Mutual, Inc." that says, "... the Company acquired Providian Financial Corporation, a credit card lender" Again, that fact might be relevant with other established facts, but alone establishes nothing relevant to the petition for unclaimed funds before this court. This court cannot leap to the conclusion that a relationship now or ever existed between Providian Financial Corporation and Providian National Bank; moreover, if such a relationship existed, this court cannot leap to the conclusion that establishes exactly what that relationship is or was and its connection to WaMu.

An additional problem exists with the petition of Agent to claim the Dividend. Agent's attorney cannot file pleadings in this court as an attorney representing Agent unless she is admitted to practice before this Court.

WaMu has authorized Agent to act as its attorney-in-fact in this case but Ms. Sawyer, its general counsel, is not authorized to practice in this Court.² See, *In re Alston*, Case No. 01-87477 (July 31, 2007) (Bonapfel, J.). The *Alston* court addressed the issue presented by Ms. Sawyer's filing of a pleading (another petition for unclaimed funds), as a lawyer without being admitted to practice in this court. In that case, the *Alston* court explained (footnotes in original):

. . . [I]t is not necessary for an attorney to be admitted to the Court's bar for purposes of filing a proof of claim,³ and the Court permits an applicant that is a corporate or other entity to retrieve unclaimed funds without the necessity of engaging counsel, notwithstanding the general rule in the Eleventh Circuit that a corporation or other entity may not appear in a federal court other than through a licensed attorney at law.⁴ But the filing of a *pleading* by an attorney on behalf of an entity is another matter. The Court has not permitted, and will not permit, the filing of a pleading by an attorney who is not admitted to practice before it. If Ms. Sawyer is authorized to act on behalf of The Locator Services Group, Ltd. *as an officer*, as the Court has assumed in previous cases, she is free to do so; her status as an attorney does not require that she be admitted to practice in this Court for the purpose of filing a paper on behalf of an entity in her capacity as an officer of it, when filing without an attorney is permitted. What she cannot do is act or purport to act *as an attorney* in the

² Ms. Sawyer is not listed as a member of the State Bar of Georgia.

³ *In re Isom*, 321 B.R. 756 (Bankr. N.D. Ga. 2005).

⁴ *In re Applications for Unclaimed Funds*, 341 B.R. 65, 76 (Bankr. N.D. Ga. 2005), citing *Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381 (11th Cir. 1985).

filing of such a paper without being admitted. Ms. Sawyer is instructed to discontinue the filing of papers in this Court as an attorney in violation of this rule.

(Emphasis supplied.)

Because Ms. Sawyer submitted the petition in this case prior to entry of the Order in *Alston*, her conduct does not appear in willful disregard of the *Alston* order; however, Ms. Sawyer should discontinue this practice in any future petition.

Accordingly, it is hereby

ORDERED that the petition of Washington Mutual Bank, through its Agent, The Locator Services Group, Ltd., is *denied*, without prejudice.

The Clerk is directed to mail copies of this Order to the persons on the attached Distribution List.

IT IS SO ORDERED, this the 20th day of August, 2007.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE

Distribution List:

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